



Texas Department of Insurance
Division of Workers' Compensation
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BENEFIT REVIEW CONFERENCE (BRC) INFORMATION FOR EMPLOYERS

LIABILITY ISSUES: An employer has the right to attend and to present information at a proceeding. Although an injured worker must show that an injury occurred on the job, an employer may also contest the carrier's acceptance of a compensable injury due to an exception under the Act; however, the employer must present sufficient information to support their position to shift the burden of proof to the injured worker. A party should be prepared to discuss the following information at a BRC on a liability dispute.

Definition of Terms

"Injury" means damage or harm to the body, including infections from the injury. See [§401.011\(26\)](#).

"Compensable Injury" means an injury in the course and scope of employment. See [§401.011\(10\)](#).

"Course and Scope of Employment" means an activity performed by the employee originating in the work of the employer. See [§401.011\(12\)](#).

"Exceptions" listed under [§406.032](#), provides specific situations that would relieve the insurance carrier for liability of a worker's compensation claim.

"Definition of Intoxication" is provided under [§401.013](#).

"Alcoholic Beverage" is defined by [Section 1.04, Alcoholic Beverage Code](#).

"Alcohol Concentration" is defined by [Section 49.01, Penal Code](#) (for injuries on or before 9/1/99) or by [Section 49.01\(2\), Penal Code](#) (for injuries on or after 9/1/99).

"Controlled Substance" or a **"Controlled Substance Analogue"** is defined by [Section 481.002, Health and Safety Code](#).

"Dangerous Drug" as defined by [Section 483.001, Health and Safety Code](#).

"Abusable Glue or Aerosol Paint" as defined by [Section 485.001, Health and Safety Code](#).

"Employer's Bill of Rights" allows an employer to attend a proceeding, present information and contest an injury accepted by the carrier. See [§409.011](#).

Division Forms

- DWC-1, "Employer's First Report of Injury or Illness" (paper copy if filed electronically).
- DWC-4, "Employer's Contest of Compensability Interim".
- DWC-21, "Payment of Compensation or Notice of Disputed Issue(s) and Refusal to Pay Benefits," indicating insurance carrier's acceptance of claimed injury.
- DWC-45, "Request for a Benefit Review Conference Interim," if conference was requested by the employer.

Medical Records

- Emergency room reports.
- To raise an **"alcohol or drug intoxication"** dispute, there must be medical information that establishes intoxication in order to shift the burden to the injured worker to prove his/her sobriety at the time of the injury (i.e., blood/drug test results, toxicology report).

Additional Information

- Transcribed Statement(s) – if the adjuster created a telephonically recorded interview with injured worker, supervisor(s), and/or other co-worker(s), a transcribed copy of the interview should be available.
- Witness Statements – while not all injuries are witnessed, it is beneficial to present the names and/or statement of any co-workers who support the carrier's position that the claimed injury is not work related.
- To raise a **"horseplay"** dispute, there must be information that shows the injured worker willfully engaged in an act of horseplay and the horseplay was a producing cause of the claimed injury.
- To raise an **"act of God"** dispute, there must be information to show that the injured worker's employment did not expose him/her to a greater risk of injury than the general public; the term implies the intervention of some cause not of human origin and not controlled by human power (i.e., tornado, lightning, etc.).
- To raise a **"willful intention to injure him/herself or unlawfully injure another person"** dispute, there must be information (i.e., police report, witness statements) to show the injury did not occur in the course and scope of employment and the injured worker willfully intended to injure his/herself or another person.
- To raise an **"act of a third person intended to injure the injured worker"** dispute, there must be information (i.e., witness statements, police report) to show that the claimed injury resulted from personal animosity by a third person towards the injured worker, unrelated to the employment.
- To raise an **"off-duty (recreational/social/athletic) activity"** dispute, there must be information to show the activity was not part of the normal work activity, nor was there a reasonable expectancy of or requirement by the employment.

Exchange of Information

- Must be exchanged with DWC and other parties per [Rule 141.4](#).
- Must be exchanged no later than 14 days prior to a BRC (5 days if BRC was expedited).
- Bring information that is obtained **after** the exchange deadline to the conference in sufficient copies for filing and exchanging at the conference.